

PT 01-36

Tax Type: Property Tax

Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

R. WINSTON
AND JEAN MAZAKIS,
APPLICANTS

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 00-PT-0028
(99-22-0481)

P.I.N: 03-14-217-001

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Robert G. Rybica, Assistant State's Attorney for the County of DuPage, on behalf of the DuPage County Board of Review.

SYNOPSIS: This proceeding presents the issue of whether a privately owned residential condominium unit located within a building improvement situated on real estate identified by DuPage County Parcel Index Number 03-14-217-001¹ qualifies as for exemption from 1999 real estate taxes as a housing facility provided for clergy within the meaning of Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.* The underlying controversies arise as follows:

R. Winston and Jean Mazakis (hereinafter the "applicants") filed a Petition for Real Estate Tax Exemption with the DuPage County Board of Review (hereinafter the

1. The condominium unit that is the subject of this proceeding shall hereinafter be referred to as the "subject condominium unit;" the building in which that condominium unit is located shall hereinafter be referred to as the "building" and the real estate on which that building is situated shall hereinafter be referred to as "the subject property."

“Board”) on September 30, 1999. The Board reviewed the applicants’ Petition and recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the requested exemption be denied. The Department then issued its determination in this matter on February 3, 2000, finding that the entire subject property was not in exempt ownership and not in exempt use.

Applicants filed an appeal to this denial and later presented evidence at a formal evidentiary hearing. Following a careful review of the record made at that hearing, I recommend that the Department’s initial determination in this matter be affirmed.

FINDINGS OF FACT:

1. The Department’s jurisdiction over this matter and its position therein are established the admission of Dept. Ex. Nos. 1, 2 and 3.
2. The Department’s position in this matter is that the subject property as a whole, and the subject condominium in particular, are not in exempt ownership and not in exempt use. Dept. Ex. No. 3.
3. The subject property is located at 241 N. Walnut, Bensenville, IL 60160 and improved with a multi-unit condominium complex. That complex includes unit 1-W, a 2,000 square foot condominium unit which is the subject of this proceeding. Dept. Ex. Nos. 2, 4.
4. R. Winston Mazakis (hereinafter “Pastor Mazakis”), a licensed Gospel Minister of the Calvary Baptist Church, is spiritual leader of the North Side Calvary Baptist Church (hereinafter “NSCBC”). Applicant Ex. No. 3-A; Tr. p. 12

5. NSCBC is a Christian Evangelical Church of approximately 70 parishioners. Its main church facility, located at 7654 W. Berwyn Ave., Chicago, IL, is located approximately six miles from the subject property. Tr. p. 9.
6. NSCBC's main church facility has been exempt from real estate taxation since the Office of Local Government Services issued its determination in Docket No. 97-16-986 on August 13, 1998. Administrative Notice; Dept. Ex. No. 5; Tr. p. 30.
7. Pastor Mazakis is also the spiritual leader of the Chicago Arabic Baptist Church, a small Arab Christian congregation that conducts worship services in Arabic and meets in NSCBC's main church facility. Tr. p. 12.
8. Pastor Mazakis and his wife, Jean, entered into "Articles of Agreement for Deed" for the subject condominium unit on August 5, 1999. These Articles indicate, in substance, that the Mazakises are entering into an agreement to purchase said unit from the seller, a private individual named John Cianfaglione, under the terms and conditions set forth therein. Applicant Ex. No. 6.
9. The pertinent terms and conditions set forth in the Articles are as follows: (1) total purchase price for the condominium is fixed at \$105,000.00; (2) the Mazakises are to pay that price by: (a) first depositing \$6,000.00 in earnest money with the seller; and then, (b) paying the remaining balance of \$99,000.00 in monthly installments of \$726.43 plus interest and a separate allotment for payment of property taxes; (3) the Mazakises are to make these monthly payments over a five year period beginning September 1, 1999 and ending August 31, 2004; (4) the seller is to execute a warranty deed that vests the Mazakises with joint tenancy ownership of the condominium, if and only if the Mazakises fulfil all of their financial obligations under the Articles in

a timely manner; and, (5) no legal or equitable interest in the condominium shall vest in the Mazakises until such time as they receive an appropriate warranty deed from the seller. Applicant Ex. No. 6.

10. The Mazakises moved into the subject condominium unit on August 5, 1999 and resided there throughout the remainder of the 1999 assessment year. Tr. pp. 19-20.

11. Pastor Mazakis was not required to live in the condominium as a condition of his employment with either of the churches that he served. He did, however, maintain his office in the condominium, and conduct regular Bible studies, fellowship meetings, pastoral counseling sessions and congregational board meetings therein, after he and his wife assumed residency. Applicant Ex. No. 4; Tr. pp. 19-21, 26-27, 29-30.

CONCLUSIONS OF LAW:

An examination of the record establishes that these applicants have not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject condominium unit from 1999 real estate taxes under Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.* Accordingly, under the reasoning given below, the Department's initial determination in this matter, finding that said condominium unit is not in exempt ownership and not in exempt use, should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-40 of the Property Tax Code 35 ILCS 200/1-1 *et seq.*, wherein the following are exempted from real estate taxation:

200/15-40. Religious purposes, orphanages, or school and religious purposes

All property used exclusively² for religious purposes,³ or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to a profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers performing the duties of the vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution or denomination requires that the above-listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 ILCS 200/15-40.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies. In order to minimize the harmful effects of

2. The word "exclusively" when used in Section 200/15-40 and other property tax exemption statutes means the "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

3. As applied to the uses of property, a religious purpose means "a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction." People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

such lost revenue costs, exemption statutes must be interpreted in rigorous conformity with the Constitutional limitations thereon. Accordingly, statutes conferring property tax exemptions are to be strictly construed so that all factual inferences, debatable legal questions and other disputed matters are resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987)).

The precise debatable question at issue herein is whether a privately-owned residential condominium unit qualifies as a tax-exempt “parsonage” within the meaning of Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.* Pursuant to Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994), I conclude it does not.

In Immanuel Evangelical Lutheran Church, the appellant church sought a real estate tax exemption for a parcel that was subject to a contract for deed between itself as contract seller and its minister, Reverend Theodore Gall and his wife, as contract purchasers. The contract provided, in relevant part, that the Galls were to purchase the property from the appellant, pay all real estate taxes and use the property as a parsonage. Immanuel Evangelical Lutheran Church at 679. Despite these contractual obligations, the court held that the property did not qualify for exemption under the then-existing version of Section 15-40⁴ because the contract vested the key elements of ownership, namely control of the property and the right to enjoy its benefits, in the Galls as private individuals. Immanuel Evangelical Lutheran Church at 682-683.

4. That version, contained in Section 19.2 of the Revenue Act of 1939 (35 ILCS 205/19.2), is substantially identical to Section 15-40 for present purposes.

This factor proved decisive in Immanuel Evangelical Lutheran Church because the parsonage provisions specifically required (and for present purposes do require) that the property in question be owned by a duly qualified religious institution. Hence, “[a]lthough the tax exemption is ordinarily available to property used exclusively for religious purposes without regard to ownership, the statute does require ownership, as well as exclusive use, for property used as parsonages or other housing facilities provided for ministers and their families.” Immanuel Evangelical Lutheran Church at 681.

In comparing this case to Immanuel Evangelical Lutheran Church, I can not avoid noticing that, from a contractual standpoint, these applicants held no legal or equitable interest in the subject condominium unit during the tax year in question. This is because the “Articles of Agreement for Deed” under which they will eventually acquire an interest in said unit specifically state that: (1) the applicant-purchasers shall not be vested with any legal or equitable right, title, or interest to that unit until the seller effectuates an appropriate delivery of the necessary deed; and, (2) the applicant-purchasers shall not be entitled to receive such delivery unless and until they have fulfilled all of their financial obligations under the Articles. Under these terms, the most these applicants have acquired under the Articles is a future interest that enables them to obtain ownership of the subject condominium unit upon the occurrence of a specified condition precedent.

Such an interest is far too tenuous to establish that the Mazakises actually owned the subject unit during the tax year in question. However, even if this were not the case, Immanuel Evangelical Lutheran Church clearly holds that ownership interests vested in private individuals are legally insufficient to satisfy the very specific ownership requirement articulated in Section 15-40. This is especially true in a case, such as the

present one, wherein the purported purchase document contains absolutely no mention of a duly qualified religious institution and *both* of the parties thereto are private individuals. Accordingly, for all the above-stated reasons, the Department's finding that the subject condominium unit is not in exempt ownership should be affirmed.

With respect to exempt use, it is first noted that a "parsonage, convent or monastery or other housing facility shall be considered ... to be exclusively used for religious purposes [under Section 15-40] when the church, religious institution or denomination requires that the above-listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility." 35 ILCS 200/15-40. The Articles of Agreement for Deed are complete devoid of any language imposing such a requirement. More importantly, Pastor Mazakis specifically admitted in writing that his pastoral duties did not require him to reside in the subject condominium unit. (Applicant Ex. No. 4; Tr. pp. 14-15). Therefore, it appears that Pastor Mazakis resided in that unit as a matter of convenience.

Such convenience does not equate to the type of occupational necessity required under Section 15-40. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App. 3d 431, 444 (2nd Dist. 1987). *Accord*, Lutheran Child and Family Services, 160 Ill. App.3d 420, 426 (2nd Dist. 1987). Accordingly, the Department's finding that the subject condominium unit is not in exempt use should be affirmed.

Based on the forgoing, I conclude that the subject condominium unit does not qualify for exemption from 1999 real estate taxes as a "parsonage" or other housing facility provided for clergy within the meaning of Section 15-40 of the Property Tax Code. Therefore, the Department's initial determination in this matter should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by DuPage County Parcel Index Number 03-14-217-001 not be exempt from 1999 real estate taxes under Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

July 13, 2001
Date

Alan I. Marcus
Administrative Law Judge